

## GOVERNOR'S MESSAGE

TO THE

## LEGISLATIVE ASSEMBLY

OF THE

## TERRITORY OF UTAH

EXECUTIVE OFFICE, U. T.

Salt Lake City, Jan. 11th, 1889.

## GENTLEMEN OF THE LEGISLATIVE ASSEMBLY:

On account of the absence from the Territory of His Excellency, Governor Durkee, for the purpose of recuperating his failing health, it devolves upon me to perform the duty annually incumbent upon the Executive, to address your Honorable Body concerning the progress during the past year of affairs of general and local interest, and to advise with you touching such matters as may appear to need further legislation, as well as to draw your attention to other objects which require your consideration.

It may be observed that the recommendations made include many subjects which have heretofore been referred to. Concerning such matters it may be well to draw your attention to the increased importance of their nature. The population of the Territory is being continually augmented; intercourse with other communities has become more common, and the classes of people, connected with commercial and other interests, are becoming greater in number. As a consequence, laws which were adapted to the circumscribed wants of the people of the Territory in their former condition, do not, in all cases, meet the requirements of the position into which they are brought by the progress of events.

The more extensive and general the business relations of a people become, the more particularly is there required in the laws governing the pursuits in which its members are engaged, and subjects which before required little or no attention, also become of importance, requiring the enactment of laws to regulate their course. Being a body organized directly from among the people, you are probably conversant with such legislation as may be necessary to place them in harmony with the relations into which they are thus being placed, and to that object your especial attention is invited.

## NATIONAL AFFAIRS.

During the past year many events have transpired the results of which will have an important bearing upon the future welfare of our country. Among which the Presidential election last held in the States, may be considered.

Although, as a Territory, we have no voice in the choosing of a Chief Magistrate of the nation, yet, as loyal citizens, we cannot but feel a deep interest in the issues which arise among the political parties of the day. Living upon the public domain, which is directly under the control of the legislative power of the Union, the principles or ideas entertained by the dominant party therein become the more important to us, inasmuch as they affect indirectly our prosperity.

As far as can be foreseen, the triumph of the principles of the Republican party indicated by the election of General Grant to the Presidency, will be beneficial to the country. The uniform success which has attended the public acts of the President elect, by which he has won the confidence of his fellow-citizens, justifies the expectation that with the incoming of his administration, renewed vigor will be given to projects looking to the advancement of the nation towards greater harmony, wealth and prosperity.

#### NORMAL SCHOOL.

In connection with the school system established in this Territory, I would suggest the propriety of legislation authorizing the institution and carrying on of a Normal School, for the purpose of preparing competent teachers for the schools of the different districts.

The advantages to be derived from such a school are too obvious to need amplification. A uniform and requisite knowledge by instructors of those branches necessary to the proper development of the minds of the young, greatly increases the probability that their progress will be rapid in their studies, and gives the public confidence that proper measures are being taken for the advancement of the educational interests of the country.

#### FREE SCHOOLS.

By an Act providing for the establishment and support of Common Schools, approved Jan. 19, 1866, it was enacted in section seven, that the Trustees, authorized to be elected by section four of the same Act, should have the power to assess a tax of one-fourth of one per cent. on all taxable property in their respective districts, to build and keep in repair suitable buildings for the accommodation of schools, and for other school purposes; they were also authorized to increase the amount of taxation, if sufficient means could not be obtained for the object contemplated by the rate of tax mentioned, to any rate not exceeding three per cent., as should be decided by a vote of two-thirds of the tax payers voting at a meeting called for the purpose; also, by the same section, and in a similar manner, a sum not exceeding one per cent. per annum was authorized to be assessed, to pay teachers, supply books and furnish other necessary adjuncts to schools.

This Act undoubtedly looked to the establishment of Free Schools, but as the first section of it left it to the option of the inhabitants of the several districts, whether they should give effect to the provisions of the Act or not, that object has been far from attained.

The organization of schools as they now exist, is based upon a combination of the plans by which Select and Common Schools are supported, taxation, tuition fees, and voluntary contributions being resorted to in order to procure means to carry them on, but I am not informed of the existence of a single Free School in the Territory.

Upon referring to the yearly report made by the Superintendent of Common Schools to your body for the year 1867, it will be observed that the number of children between the ages of four and sixteen years, residing in the 161 districts furnishing returns to him, was 21,316, of whom, only 12,538 were enrolled as attending school. Here, as in every State and Territory, there is a class of persons living, who are in indigent circumstances, and to whom to pay the smallest amount for the education of their children, would be a burden. Others, from not fully considering the subject, are not aware of the importance of education, and consequently allow their children to grow up in ignorance, rather than furnish the means for their improvement, and it is presumed that the large percentage of children not being educated is owing to the existence of these classes in our midst.

In his report for the year 1864, the Superintendent states that he "does not favor education by taxation, because, while the sentiments of the people are favorable to education, they are equally unfavorable to taxation," and that "while under the present regulations many tax themselves from one to four per cent, and pay it willingly to the school teacher, would feel very differently were the Territory to assume the assessment and collection of such a heavy tax." While taxation is conceded to be vexatious, it is submitted whether, considering the great importance of the subject, it is better to allow the prejudices of a few against paying a required amount to a Territorial officer, to subvert the interests of the public generally, by depriving a portion of the children of the Territory of school privileges.

All classes of persons are interested, directly or indirectly, in the establishment of Free Schools—directly by having children of their own to educate, or indirectly by the obligations under which every member of society is placed to favor all enterprises tending to the common weal. By an equal assessment on taxable property, as contemplated by the Act of 1866, it is presumed that sufficient means might be procured to extend the facilities for education to every child in the Territory—affording to the rich and poor an equal chance at the fountain of knowledge.

It is therefore suggested that the Act of 1866 be amended, so as to allow the assessment and collection of a sum sufficient for the support of Free Schools throughout the Territory, to be assessed in connection with other Territorial taxes, and that the provisions of the same be required to be carried out.

#### MEMORIALS TO CONGRESS.

Our Honorable Delegate succeeded, upon the representations made in the Memorial addressed to that body at the last session of the Assembly, in obtaining prompt action upon a bill for the establishment of a Land Office for the Territory, which is a matter of congratulation.

However, owing to the fact that the corners established by the different parties employed in the survey of the Public Lands in the Territory having been of so unsubstantial a character, that but few, if any of them, can be found in existence, a re-survey will have to be made before settlers can procure a complete title to their lands from the Government. This fact, I am informed by the Surveyor-General of the Territory, has been brought to the notice of the proper authorities in Washington, with the suggestion that the

money appropriated at the last session of Congress for Public Surveys, be used in a re-survey of such portions of the Public Lands found to be available for settlement and cultivation. Should this not be authorized, I would suggest that Congress be memorialized to make an appropriation of \$60,000 for the purpose, that sum being considered necessary by the Surveyor-General.

The building now being used for the confinement of Penitentiary convicts is not of sufficient size, and improper ventilation and other causes, render it unsuitable for that purpose, and it is suggested that a memorial be addressed to Congress, asking that the Internal Revenue derived from this Territory, for a period of sufficient length to obtain the requisite amount, be set aside for the purpose of providing the necessary Penitentiary accommodations. Appropriations of this character have been made by Congress for the Territories of Montana and Idaho, and no good reason seems to exist why a like policy should not be extended to this Territory.

#### CONFINEMENT OF PRISONERS.

There is a want of legislation providing for the reception and sustenance of prisoners brought from other Counties in the Territory to be confined in prisons situated in the County of Salt Lake.

The lack of secure places of confinement throughout the Territory, necessitates the commitment of nearly all persons whose imprisonment becomes necessary, to the prison provided in this County.

In the cases of offenders against the laws of the Territory, I am informed that it is the practice to receive and keep them, charging the cost of their keeping to the respective Counties from which they are sent.

This is the correct course of proceeding; but while it is not authorized by legislative enactment, officers of prisons are not compelled to receive those committed to their care from places outside of a certain limit, thus leaving it in a manner discretionary with a mere ministerial officer, whether persons brought to them shall be incarcerated or not.

More particularly is the want of legislation felt in cases where offenders against the laws of the United States are concerned.

Section eight, of an Act in relation to the Penitentiary, approved Jan. 20, 1860, provides that the Warden "shall receive all persons duly committed," but probably on account of a re-imbursement of the necessary expense of keeping a prisoner of this kind, not being so readily or easily secured as in the case of a Territorial offender, officers of the Territorial Penitentiary have repeatedly refused to receive persons committed to their charge by United States officials. No other place being provided for their confinement, the result of this is, that they have had to be either turned loose, without an opportunity being given of having their guilt or innocence established, or turned over to the military authorities to be cared for. The injustice of the former course, both to the person and to the public, is apparent to all, and the latter course should never be pursued, except in cases where the civil authorities are incapable of enforcing the civil laws of the country.

Provisions should be made whereby all persons committed by competent authority, and in a proper manner, can be confined at the expense of the Territory, subject to reimbursement from the



proper source for the cost of their keeping, and the subject is respectfully submitted for your consideration.

#### CHAIN GANGS.

The system of chain gang labor now in vogue here, is a relic of barbarism, needlessly exposing convicts to the public gaze, and tending to harden rather than reform them.

Punishment of a criminal has for its principal object, his reformation and not his disgrace, and confinement, with proper labor, would be of greater efficacy in reforming culprits than their exposure and consequent degradation in the manner mentioned.

#### INTEREST LAW.

The Interest Law passed by your Honorable body at its last session, declares "That it shall not be lawful to take more than ten per cent. interest per annum, when the amount of interest has not been specified or agreed upon."

According to the legal construction put upon the language of this Act, a creditor is obliged to prove the amount of damages sustained by him to have amounted to ten per cent. per annum of his claim, in all cases where the rate of interest has not been specified; in order to be able to collect that amount; and although in no such cases can more than ten per cent. per annum be collected, yet it is presumed that your intention was to avoid trouble and delay in litigation, by declaring expressly the rate of interest creditors should receive when it is not specified. It is therefore necessary that the Act in question be amended, in order to give it the efficacy intended.

#### LIMITED PARTNERSHIPS.

The first section of an Act concerning Partnerships passed by the Legislative Assembly of the Territory, approved Jan. 14, 1857, provides that "the private property of persons engaged in co-partnerships shall be held liable for the debts of the firm, when the partnership property shall prove insufficient to pay them."

This section is but an affirmation of a common law principle, but its applicability to the interests of a community, in view of the increased extent and value of investments in commercial enterprises has been questioned. In many States of the Union, the contrary doctrine has been enacted, and it is suggested that the statute mentioned be amended, so as to make persons entering into partnerships liable to creditors of the firm, as such, only to a certain fixed sum, the amount of which shall be the subject of agreement between the parties, and made known in a manner which may also be provided for.

#### GENERAL INCORPORATION ACT.

A law passed by Congress, March 2, 1807, prohibits the Legislatures of the different Territories from granting private charters or especial privileges, but they may, in the language of the statute, "By general Incorporation Acts, permit persons to associate themselves together as bodies corporate, for mining, manufacturing, and other industrial pursuits."

An Act of that character, properly defining the rights, powers and liabilities of the stockholders, would be of great utility in forwarding the commercial and other interests of the people, and should be incorporated among the Statutes of this Territory.

## LITEN LAW.

According to the common law, a mechanic who labors in erecting or repairing buildings, has no lien upon such property, to secure a proper remuneration for his work.

Generally, laws of this character extend the lien to the land upon which the buildings may be situated, and it is respectfully suggested that such a provision be made a part of any legislation you may see fit to enter into respecting the subject.

## INDIAN AFFAIRS.

During the past year but little if any trouble has been experienced by depredations being committed by members of Indian tribes residing in this Territory. Small parties of hostile Indians, coming from the Territories of Arizona and New Mexico, have occasionally extended their raids into the southern settlements, but on account of the watchfulness of the settlers and the faithfulness of friendly tribes in that neighborhood, but a small amount of damages have been sustained therefrom.

Owing to the hostile position assumed by many Indian tribes of the Western Territories, a stringent policy has had to be adopted by the military authorities of the country infested by them. That it should seem necessary to prosecute a severe and bloody war against such refractory tribes before a lasting peace can be secured with them, the dictates of humanity cause regret, and lead to the expression of the hope that the necessity will not long exist.

Considering the number of Indians residing in this Territory, it is a subject of congratulation that so little trouble has been lately experienced in dealing with them, and the effect of a change of the administration of their affairs from the Interior to the War Department, or to a separate Bureau, as contemplated by bills now pending before Congress, should be regarded with interest.

## PACIFIC RAILROAD, MINERAL RESOURCES, ETC.

The consideration of matters of public moment would be incomplete, did I not refer to the progress made in the construction of the Pacific Railroad. During the past year nearly 1,000 miles of the two branches of this enterprise have been built, and only about 300 miles remain to be constructed to complete the line of communication across the continent.

The advantages to be derived from the building of this road cannot be fully foreseen as yet. By it the welfare of the entire Union will be advanced, inasmuch as it must enhance the national wealth and assimilate to a greater degree the interests of the East and West, by tending to infuse into every class of people uniformity of progress in knowledge, and similarity of character. It becomes particularly of local importance to the people of the West from the facilities it affords for immigration, exportation of products, and importation of necessities, and every branch of our social and political life must consequently feel the influence of its existence.

The Territory of Utah comprises an extent of country rich in minerals, capable, in process of development, of placing it among the first of the Western Territories in respect to population and wealth. The Pacific Railroad will afford great advantages for that desirable result to be obtained. If the proper inducements are held forth to capitalists to invest their means in developing our mines, and mechanics and laborers to settle among us. Therefore, but

little attention has been paid to the mining interests of the Territory, owing probably to the fact that projects of that nature have been considered unsafe for investments, on account of the great cost of machinery, labor, &c. Under existing circumstances, however, laws encouraging and protecting such investments, would tend to make the dormant wealth of the Territory available.

#### MINERALOGICAL CABINET

Since the mineral products of the West are of so much importance, every possible means should be taken to place all the available information in regard to them at the disposal of the public. In furtherance of this purpose, it is suggested that provisions be made for the establishment of a Mineralogical Cabinet, in connection with a Territorial Library, and the employment of a competent person be authorized to arrange such specimens as may be readily secured by contribution from the inhabitants of the different counties.

#### TERRITORIAL FINANCES.

The annual reports of the Auditor and Treasurer of the Territory are herewith transmitted for your information and consideration. It will be seen that the Territorial finances are in such a condition as to place us in a position occupied by few of the States or Territories of the Union; and if public expenditures can be regulated with regard being had to available resources, as they seem to have been in the past, no reason exists why so favorable a condition should not be continued in the future.

#### CONCLUSION.

Having briefly alluded to such matters as have presented themselves as worthy or needful of your attention, it but remains for me to express my willingness and desire to join with you in securing what should be the main objects contemplated by all legislation—the future welfare and prosperity of the Territory.

It is to the enactment and enforcement of just laws that the people look for the protection of those rights, immunities and privileges, which, under a Republican form of government, accrue to them, and in assuming your share of the responsibilities of legislation, let the path of duty which presents itself, be followed without fear or favor, leaving the results to be tempered by the hand of that kind Providence which shapes all things to the accomplishment of His own good purposes.

Edwin Higgins, Acting Governor.

#### RECEIVED

Paid on account of balance on Order Bill, \$100.00  
 appropriated Feb. 21, 1888  
 Paid on Keweenaw wagon road for balance, Feb. 21, 1888





19  
**HISTORIAN'S OFFICE** 70

Church of Jesus Christ  
of Latter-day Saints.

No. 19

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### GENTLEMEN OF THE LEGISLATIVE ASSEMBLY:

In accordance with approved precedent and time-honored custom, it is the duty of the Executive to communicate to the Legislature at each recurring session the condition of the Territory and to recommend such legislation as may be deemed expedient and adapted to the varied wants and manifold interests of the people.

It is a source of regret, no less to me than to your Honorable Body, that the unlooked for absence of the Governor has devolved this duty upon me with so limited a notice as to make it impossible for me to discharge it with entire satisfaction to myself or with justice to you. Under these circumstances I can hardly hope or essay to do more than lay before you the reports of the several Territorial officers whose duty it is to report through me to your Honorable Body, accompanied by a few general suggestions in relation to the condition of the Territory and the legislation which in my judgment is needful and proper.

I have the honor to lay before you the reports of the Territorial Auditor and Treasurer and also of Chief Justice Wilson and Associate Justice Hawley, which are required by Section 4, Chapter 1 of an act concerning the Judiciary.

The report of the Chief Justice, it is proper to say is merely a memorandum from which he intended to compile a more elaborate and formal report. In his absence I have thought proper to place it before you, knowing it contains suggestions worthy of, and which will undoubtedly commend themselves to your attention and consideration.

The report of Associate Justice Hawley has been prepared with great care and will be found to contain many valuable suggestions.

### FINANCE

From the reports of the Territorial Auditor and Treasurer it will be seen that the finances of the Territory are in a prosperous and healthy condition, presenting as they do the unusual fact that the Territory is entirely free from debt; a condition not only gratifying in itself but almost without a parallel in the history of other parts of the common country. In congratulating you upon this flattering condition of the affairs I need hardly add that it reflects great

credit on those who have had the administration of the finances of the civil government throughout the Territory. So far as I have been able to inform myself the affairs of all the counties in the Territory are in a like creditable condition.

The general prosperity of the country and of the Territory is a subject of congratulation. Peace and plenty smile throughout the land. The crops of the Territory have been with but slight exceptions abundant, offering new and continued proofs of the richness of the soil and its adaptability to agricultural and grazing purposes. Although in the counties of Cache, Iron and Washington the ravages of the grasshoppers have, to a great extent, destroyed the crops; still it is gratifying to know that there is no suffering among the masses of the people.

#### RAILROADS.

Since the adjournment of the last Legislature, the Pacific Railroad, perhaps the most stupendous work of science and of art the mind of man has conceived and his energies consummated, has been completed. Excelling all precedent in the rapidity of its construction across plain, over mountain, through cañon and valley; dotting the hitherto almost uninhabitable waste with prosperous towns and villages; spanning a continent with its iron bands and connecting the civilization of the growth west with the teeming millions and golden commerce of the far off Ind; it cannot fail in such an age as ours, to prove the prolific mother of progress and improvement. It should be, and no doubt is, a source of pride to the people of this Territory that they have contributed not a little by their well directed efforts to the completion of this great work. The Utah Central Railroad Company, organized pursuant to the act of February 19th, 1869, already connects the capital of the Territory with this great trans-continental highway and it needs no spirit of prophecy to foretell that the day is near at hand when, stretching to the South far across the great Rocky Mountain snow belt, it will find a terminus where the glittering blue of the Gulf of California hushes the turbid waters of the Colorado. From these mighty branches will shoot forth others which will lace and interlace the valleys of the Territory. The mighty strides in progress already achieved, bringing the Territory from comparative isolation into contact with the great marts of the world, cannot fail to work many changes in the condition of the people and revolutionize, to a great extent, their industrial pursuits and resources. The prosperous trade heretofore enjoyed with Montana and Idaho on the north, Nevada on the west and the emigrant trains at home has nearly or entirely failed; but new fields for development and industry have been and are constantly being opened. Dull, and perhaps hard times and spare money markets must necessarily accompany the transition. It was for the people of Utah to discover and demonstrate to the world the richness of her soil; it remains for them now to more fully develop her no less extensive mineral and manufacturing resources. By a proper combination of all these branches of industry, can we alone hope to give strength and greatness to the country and lay broad and deep the foundations of a permanent prosperity. A community whose chief—whose only pursuit is agriculture, may for a time enjoy a limited degree of prosperity, but it cannot hope to become

as wealthy or as great as a community where agriculture, manufactures, commerce and mining each holds its proper part in the economy of its existence. The Territory of Utah presents an ample field for the highest civilization and improvement. With resources surpassed by few of her sister States or Territories; rich in the minerals of iron, coal, copper, salt, lead, silver and gold, in agriculture, capable of sustaining a greatly increased population, with a climate that knows neither the rigor of northern winters, nor the languor of southern summers, free from miasmatic diseases which are the bane of most new countries, a population, industrious and frugal, there is no physical reason why it should not be among the foremost in the race for commercial empire, power and greatness. But in order to meet with success, the people must be encouraged by appropriate legislation in all its legitimate branches. I would respectfully urge you to foster manufactures, mining, agriculture and all the arts, and that you encourage the building of canals and irrigating ditches. The experience of Lombardy and the Southern Mediterranean countries has demonstrated that, when once a complete system of irrigating ditches and canals has been established, agriculture can be more cheaply and profitably carried on, because more certainly pursued, than in countries subject to the exigencies of flood and drought. The Jordan, Provo, Spanish Fork, Sevier, Sanpete, Rio Virgen, Weber, Ogden, Bear, Cub and Beaver rivers, with their sources and affluents will furnish water enough to irrigate the whole Territory, and the first cost of such works for the distribution of water once provided for, it could be furnished to the consumer with very little expense. While much has already been accomplished by individual effort, the more extended works referred to are yet sleeping in the muscle, enterprise and energy of the people, awaiting only the proper legislation which shall sound the note for their awakening. In the furtherance of this end, I would particularly call your attention to the desirability of the enactment of a general incorporation law, pursuant to the Act of Congress of March 2nd, 1867, and also of an Act authorizing the formation of limited partnerships. The benefits arising from corporations, in the consolidation of means for the attainment of objects beyond the power of individual effort are so manifest as hardly to require, at this day, any argument to enforce the utility of such institutions. From the earliest times have these advantages been recognized and utilized by the wisest legislators, and in modern days incorporations for the accomplishment of great public ends have become a part of the legislation of every civilized State. With proper checks, limitations and safeguards to protect the rights of the people, they are justly regarded as essential to the well being and continued advancement of every community. The law governing corporations and defining their rights and privileges has been digested by the wisdom of ages, and it is, therefore, not an untried or uncertain field of legislation which is thus commended to your favorable consideration. Nearly all works of a public nature require the expenditure of large amounts of money, and while individuals may be induced, by public spirit or the hope of gain, to invest a portion of their means, few are found who are willing to embark all their capital in an enterprise, the management of which must, in most instances, necessarily be left to others. Through the agency of corporations most of

the great works of the past have been and all the great works of the present are being accomplished. Through their means oceans and rivers are navigated, telegraphs are constructed, canals and irrigating ditches are dug, factories are run, mines are worked, schools and banking houses are established. The passage of a wise and judicious incorporation law would have a great tendency to bring hither that capital which is so much needed in the development of the many and varied resources of the Territory, and especially would it aid in the development of the mines. There is no place in the United States where the influx of capital would so materially increase the prosperity of the people. It would expel that spirit of desolation and of solitude which broods over and guards some of the richest mines, and wrest bright treasures from the rock ribbed fortresses of nature.

Through a system of immigration, as novel as it has been efficient, large numbers of foreigners have been induced to come to this country. Most of them at once poor and industrious, gathered from all portions of the world, they have brought with them the useful arts of many climes, which, combining, cannot but aid materially in advancing the Territory in all elements of prosperity and true progress. At the late annual Territorial Fair there were on exhibition manufactured articles, not only creditable to the Territory, but which attest alike its capability in manufactures and the skill and genius of its people. Cloths, flannels and blankets of home manufacture were exhibited, not inferior to the highest grades of imported goods of their character; leather, and goods manufactured therefrom, that would be a credit to any community; watches, made in Salt Lake City, equal in scientific arrangement to the best specimens from the factories of Europe or America; pottery, creditable alike to the resources of the Territory and the skill of its artisans; cocoons and spun silk, warranting the belief that manufactured silk will ere long be one of the exports of Utah, and many other works of art, exciting at once the admiration and surprise of all who beheld them. I need hardly say that these several enterprises require, as they are entitled to receive, the fostering care of friendly legislation, and would be greatly accelerated by a well digested general incorporation law.

#### PUBLIC SCHOOLS.

A well organized and efficiently conducted system of public schools is among the highest evidences of the advancement and progress of a people. The State has an interest in the education of every child within its borders. While education confers a great benefit on the recipient of its valuable privileges, the advantages so gained are reflected back, and the bounty of the State, dispensed with an unsparing hand, is returned four-fold in the increased virtue and enlightenment of its future citizens. The strength of a State lies in the culture, the intelligence and the industry of its citizens. Considering the early history of the pioneers of these valleys it is not, perhaps, to be wondered at that the people of Utah should not in the past have enjoyed those extended educational facilities with which other and older communities have been blessed. But in view of the great importance of this question and the advancement and progress already made in other departments, it is submitted that the time has certainly arrived when every effort of the



legislature should be directed towards the attainment of an efficient and wide-spread system of common schools. While the higher grades of education are necessarily expensive and consequently beyond the reach of the great mass of the people, it should be the especial care of the legislature to see that the common branches of an English education are assured to all the rising generation "without money and without price." Property should cheerfully take up the burden and provide for a system of public free schools. No public expenditure can be more fruitful of good or return more solid and permanent advantages to the Territory.

It is but proper that I should congratulate the Legislature and the people upon the progress already made; but at the same time it is no discouragement to remind you that there remains much to be done to bring the public school system to that standard to which it should attain. I would, therefore, recommend that a sufficient tax be levied to make the public schools entirely free so far as the common English branches are concerned and provide a board of examiners who shall award certificates of qualification to parties seeking to become teachers in primary, intermediate and high schools according to the qualification of the applicant, and to offer such inducements to teachers as to induce those skilled in the profession to enrol themselves among the instructors of the youth of this Territory. It has been found in older and more experienced communities that public schools are the most successfully conducted apart from all sectarian influences and that they should not be used as the means to inculcate any particular creed or faith except that sound morality which teaches "that we should not do unto others that which we would not that others should do unto us."

#### CIVIL AND CRIMINAL CODES.

The forms, usages and practices of the common law are necessarily elaborate and technical. It has been found conducive to the advancement of justice to avoid, as far as possible, all the technicalities of the common law in its division of actions. To this end the legislatures of most of the States of the Union have passed what are known as civil and criminal codes of practice. These codes abolish the distinction of forms in action and technicalities in practice, and avoid as far as possible those labyrinths of the law, which are too often productive of no good, and only tend to mystify and encumber the progress of justice. The State of New York—a State which is an empire in itself and whose commercial transactions are far greater than those of any other State in the Union—has long transacted its judicial business under, and exemplified the utility and wisdom, of that system of legislation which made a civil and criminal code part of its public laws, since which time a large portion of the States and many of the Territories, profiting by its example, have passed similar codes and have been rewarded by equal advantages. It is scarcely expected that at one session of the legislature a complete code can be originated, but fortunately you can avail yourselves of the labors of others, and adopt such portions of the codes of other States and Territories as are suitable for the wants of our own. I would in this connection suggest the examination of the code of the State of Nevada, as being one in many respects adapted to the wants of this Territory. It is one of the most recently adopted and were drawn up by a lawyer of great ex-

perience and eminent ability for a people whose interests in many respects are similar to our own. The entire legislation of this Territory is comprised in a small volume, which in ordinary States is hardly equal to the legislation of a single year. Perhaps this has arisen from the mistaken idea that the people needed few and simple laws; forgetting that where the statutes leave off, the common law begins, and that in such cases courts are obliged to resort to its technicalities for the determination of those questions which should be plainly written down in the statutes.

#### WITNESSES.

Modern experience I think has demonstrated that the ends of justice are best subserved by allowing all parties, whether interested or not, to testify in their own behalf in both civil and criminal cases; thus enlarging the sphere of the jury and leaving them to determine as to the credibility of witnesses. In civil cases this course helps to facilitate business. The careful and shrewd business man in the conduct of affairs sees to it that his contracts are reduced to writing or susceptible of proof by disinterested witnesses; but the less wary are too often negligent in these matters and not unfrequently a good cause is lost and justice herself perverted because under the existing law the truth cannot be told. Thus in the tribunals of the land are the unskillful and ignorant, and for that reason perhaps the more unsuspecting, sacrificed to the shrewdness of a more crafty opponent and the rigorous rule of the law. The idea embodied in the common law, that a person, however true in his manhood, is unworthy of credence by reason of a mere nominal interest, no matter how slight, when testifying under the solemnity of an oath, is but the relic of a ruder and less generous age, and unworthy the progress of the nineteenth century. The jury should be left to determine the reliability of each witness from his appearance on the stand and all the circumstances surrounding each case. In many capital cases when the deceased and the accused are the only parties to the affray, the testimony of the criminal may serve to throw in light, and however much his statement may favor himself, the jury are better enabled to arrive at correct conclusions in regard to the real facts in the case. Whatever code of practice you may deem proper to adopt, I would respectfully recommend that no party shall be excluded from testifying on account of interest in the result of the case.

#### PENITENTIARY.

The Penitentiary in this Territory is wholly inadequate for the purposes for which it was designed, viz: the security of persons convicted of felony. The certainty rather than the severity of punishment is justly esteemed the great preventative of crime in deterring the evil disposed from its commission. Few crimes would be committed if it were certain that the full punishment of the law awaited the perpetrator; and it has become almost an axiom that in proportion as the certainty of punishment is lessened from any cause, in a like degree is crime increased. It cannot be doubted that the insecurity of the Penitentiary operates to diminish the terror of punishment by the hope of escape. I would therefore respectfully recommend that an appropriation be made by the Territory for the repairing of the Penitentiary and making it secure and that Congress be memorialized to contribute to this object.

## CHAIN GANG.

Allow me again to call your attention to a matter which has been noticed in previous messages: the working of men convicted of misdemeanor in the chain gang upon the public streets. The true object of all punishment is to reform the offender and deter others from the commission of offences. The public exposure of those who have committed some petty and trivial offence, with a huge ball and chain attached to the leg, can only tend to defeat the first object of punishment, by hardening the culprit and extinguishing by a weight of shame every spark of manly feeling. Many who are guilty of no crime save that of misfortune, coming hither "stranger among strangers" and in an unguarded moment, oppressed by the unkind throws of fortune and unsustained by the influence of friends, give way to the tempter, become intoxicated—perhaps noisy—and are arrested by the police. Should one of this class be so unfortunate as to be without means of paying his fine, the terrible alternation of work upon the public street with ball and chain attached to his leg awaits him. Hopelessly crushed and humiliated beyond expression, he endures this most barbarous and disproportionate penalty, and having thus exalted the folly of a moment, he goes into the world an enemy to mankind with a heart ready to engage in any crime. It is to be hoped that nothing further need be said on this subject to induce you to put aside this unkind and, as I believe, disgraceful custom.

## DEPUTY OFFICERS.

It is desirable that you should pass a law authorizing the clerks of the several courts, and county recorders, to appoint deputies. While I believe that no persons should hold official positions who are not at once competent and willing to perform the duties thereof; yet there are times when, through unavoidable absence or sickness, the principal is unable to attend to his official duties. At such times it would be a matter of convenience, both to the officer and to the public, if the law authorized the appointment of deputies.

## REPEALING LAWS.

By section four, chapter eight of an act relating to attorneys' it is provided:

"No person or persons employing counsel in any of the courts of this Territory shall be compelled by any process of law to pay the counsel so employed for any services rendered before or after or during the process of trial in the case."

In all civilized countries attorneys are recognized as officers of the court. It would be equally unjust not to allow judges salaries or jurors compensation for their services. The profession of the law is only acquired after years of patient and hard study. As a class, attorneys have done as much, if not more to ameliorate and elevate mankind than any of the learned professions. They have originated principles for the administration of justice that are as substantial and enduring as the mountains and remain monuments of their wisdom, prudence and forethought. In our own country they have numbered among them such high ornaments to the human race as Hamilton, Adams, Otis, Pinkney, Webster, Clay, Choate, Lincoln and many others who have been the foremost men of their age. Any statute that attempts to deprive them

of their rights is as unwise and unjust as it has been and always will be found to be nugatory and void. It is hoped that you will concur with me that the law mentioned should be wiped from the statute books.

Section one of chapter two of an act concerning the laws of Utah provides:

"That no laws or parts of laws shall be made, argued, cited or adopted in any court during the trial of any case, except those enacted by the Governor and Legislative Assembly of this Territory and those passed by the Congress of the United States when applicable, and no reports, decisions or doing of any court shall be read, argued or adopted as a precedent in any other trial."

This statute is necessarily nugatory as no court of justice would refuse to listen to those precedents of law which the experience of mankind and the wisdom of ages have sanctioned. Law is a profession and science and like other professions and sciences it is almost wholly indebted to the past for that perfection which it has attained in the present. The Legislature might as well attempt to forbid the physician to become enlightened by the study of the masters of the profession or the priest to quote from the sayings of the fathers of the church. It oversteps the just bound of legislation and has no effect but to create a sneer of derision. Another law, similar in spirit, is to be found on page fifty-eight of the "Revised Statutes," which forbids or restricts the use of many of the most valuable medicines known to the *materia medica*. The science of medicine has made great progress in this century and diseases which have been supposed to be incurable have yielded to its advancing skill. Among its most potent agencies under all systems of practice are to be found many of the medicines enumerated in the section referred to. It is from the skillful combination of these and other medicines that diseases are conquered. All such statutes savor rather of prejudice than of wisdom and it is hoped that the present Legislature by a careful revision will erase them from the laws of the Territory.

The acts of Congress of July 20th, 1868 and of March 30th, 1869, provide for biennial sessions. Unless this law should be changed, it will be necessary for the present Legislature, before final adjournment, to provide for biennial sessions by the enactment of suitable laws.

I would recommend that those acts which the Legislature considers of the most importance should be taken up by you at an early period of your session, to the end that should there be any disagreement between the Legislature and the Executive as to any of your enactments, there may be sufficient time to canvass and thus remedy or obviate such objectionable features. Postponing to the last hours of the Legislature important bills, is not only unjust to the Executive, but often results in serious inconvenience to the whole people by the needless failure of important measures for want of proper time to examine and digest them.

I would recommend you to memorialize Congress for annual sessions of the Legislature, believing that the development and progress of the Territory in opening new fields of industry will demand your fostering and continued care.

Section 4, chapter one, of the laws of Utah, makes it the duty of the Federal judges to report to the Legislature such omissions, discrepancies and imperfections of the law as may have come within



their practical experience in its administration. From the elaborate reports of Associate Justice Hawley and minutes of Chief Justice Wilson, herewith transmitted, I cannot doubt but that this duty has been well performed. There are, however, omissions, discrepancies and imperfections which I should esteem it my duty to call to your attention were I not fully apprised that any recommendations I might make, however wise and necessary, in my judgment, would be hardly esteemed so by you. It is a fact well known no less to you than to the entire community that the Congress of the United States is now engaged in the discussion of measures designed to work important changes in the social condition of the people of this Territory. These matters, in default of similar enactments by the Legislature of Utah, have passed to the keeping of Congress, which, under the Constitution, possesses the absolute right to govern the Territory, as in its judgment it sees proper, subject only to the Constitution of the United States. Under these circumstances I deem it neither necessary nor proper for me to further remark upon questions which have already passed to the National Legislature. I therefore refrain from recommending any specific measures relative to the topic referred to, trusting in the wisdom and patriotism of Congress to pass such laws as may be in accordance with the interests of this people and the spirit and genius of the age in which we live.

S. A. MANN,  
Acting Governor.

EXECUTIVE OFFICE,  
Salt Lake City, Jan. 11, 1870.

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## AUDITOR'S REPORT.

HON. S. A. MANN,  
Secretary and Acting Governor of Utah Territory:

Sir—I have the honor to present a statement of the financial transactions of the Territory for the year commencing December 13th, 1868, and ending December 31st, 1869, as follows:

The following exhibit shows the value of property assessed in the several counties for the current year, as reported by the county clerks, amounting to eleven millions, three hundred and ninety-three thousand, six hundred and six dollars; and yielding a gross revenue for the year of fifty-six thousand, nine hundred and sixty-eight dollars and three cents. The average cost of assessing and collecting, together with usual remittances, is about fifteen per cent., or, say, eight thousand dollars, leaves a nett revenue for the year, in round numbers, of forty-nine thousand dollars, arising from the current year's taxes.